

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

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|-------------------------------------|---|----------------------|
| SHEILA TRIPLETT |) | |
| Claimant |) | |
| VS. |) | |
| |) | Docket No. 1,002,759 |
| SOUTHWEST PUBLISHING CORP. |) | |
| Respondent |) | |
| AND |) | |
| |) | |
| CINCINNATI INSURANCE COMPANY |) | |
| Insurance Carrier |) | |

ORDER

Respondent appeals the May 8, 2002 Order of Administrative Law Judge Brad E. Avery. Respondent acknowledges claimant suffered accidental injury on November 22, 2001, to her right upper extremity, but denies the accident to claimant's left upper extremity. Respondent contends that claimant's left upper extremity injury is a new and separate accident occurring on January 7, 2002, for which claimant failed to provide timely notice.

ISSUES

- (1) Did claimant suffer accidental injury arising out and in the course of her employment with respondent to her left upper extremity?
- (2) If claimant did suffer accidental injury arising out of and in the course of her employment on the dates alleged, did she provide timely notice of that accident as required by K.S.A. 44-520?
- (3) Does a limited delay in treatment to obtain an opinion on medical causation form a sufficient basis to award work disability benefits?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the evidence presented and for the purposes of preliminary hearing, the Appeals Board (Board) finds that the Order of the Administrative Law Judge should be affirmed.

With regard to Issue Number 3, the Board finds that it does not have jurisdiction to consider that issue as it does not raise an issue contained in K.S.A. 44-534a, nor does it allege or prove that the Administrative Law Judge, in any way, exceeded his jurisdiction in providing benefits as is required under K.S.A. 2001 Supp. 44-551. Therefore, Issue Number 3 above is dismissed.

Claimant injured her right upper extremity on November 22, 2001, while moving paper. Respondent contends that claimant's initial injury was limited to her right hand. This argument is based upon the November 23, 2001 report of Judy Stephens, the ARNP for Dick Geis, M.D. In that report, the typed commentary mentions only claimant's right MCP joint, middle finger and an abrasion at the distal end of the right index finger. However, the handwritten notes of that same date indicate that claimant picked up a bunch of papers to put in the machine and she felt a sharp pain in her right wrist that spread to the right shoulder at night. It also reported numbness in claimant's right fingertips. Therefore, respondent's contention that claimant initially only reported a right hand injury is incorrect.

Claimant alleges that she also suffered a later injury to her left upper extremity as a result of overcompensating for the right upper extremity problems.

Claimant was returned to work for respondent by Dr. Geis on light duty immediately after the injury. She continued working light duty until December 27, 2001, when she was returned to her regular job. Claimant stated that returning to the regular job caused her right hand symptoms to worsen. Claimant testified several times during the preliminary hearing that she was using the left hand in order to take pressure off her right upper extremity. Respondent's contention that the Administrative Law Judge, through leading and suggestive questions of claimant, tied the two injuries together is not supported by the record. Before the Administrative Law Judge asked claimant any questions, claimant had stated on two occasions that she was protecting the right upper extremity by using the left upper extremity. Even when the Administrative Law Judge was questioning claimant, she stated that she was using the left hand in order to keep the weight off of her right hand. It was only to clarify claimant's testimony that the Administrative Law Judge asked the question in the manner that he did.

Respondent further contends that claimant's accidental injury came about as a result of a specific trauma on January 7, 2002. While claimant does specifically elude to

a sudden onset of pain on that date, she also on several occasions in the record discusses the overuse of the left hand in order to protect the right hand.

Respondent also contends that claimant failed to timely notify respondent of the accident to her left upper extremity.

K.S.A. 44-520 requires that notice be provided to respondent within ten days of the date of accident, stating the time, place and particulars of the alleged accident. Claimant testified that she discussed her left upper extremity symptoms with Richard Swearingen, the human resource manager, on the same day as her doctor's examination. There is some confusion in the record as to whether this involved the January 17, 2002 examination with Craig L. Vosburgh, M.D., or the February 5, 2002 examination with Dr. Geis.

Respondent alleges the January 17, 2002 examination with Dr. Vosburgh could not involve claimant's left upper extremity as there is no mention in Dr. Vosburgh's report on that date of any left upper extremity involvement. Claimant contends she told Dr. Vosburgh of the left upper extremity symptoms, but they were left out of the report due to the presence of respondent's case manager, Valerie Smith, at the examination. Dr. Vosburgh did note in his January 17, 2002 report that Ms. Smith was present in the room. The Board finds it of concern that Dr. Vosburgh's report does not mention the left upper extremity on January 17, but the pain drawing worksheet filled out by claimant on that date shows symptoms in both the right hand and the left elbow. There is no explanation in the record for this discrepancy.

The Board finds it equally convincing that claimant told Mr. Swearingen after the January 17 examination as after the February 7 examination, since claimant testified she complained about her left upper extremity on both occasions. These contentions by claimant are supported by some, although not all, of the medical records created by the health care professionals involved in this case.

The Board finds, for preliminary hearing purposes, that claimant suffered additional injury to her left upper extremity as a result of overcompensating for her right upper extremity. Therefore, claimant's injury to her left upper extremity is a natural and probable consequence of her right upper extremity injury. Jackson v. Stevens Well Service, 208 Kan. 637, 493 P.2d 264 (1972). Notice of the November 22 accident would constitute notice regarding the left upper extremity as well.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Brad E. Avery dated May 8, 2002, should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of July 2002.

BOARD MEMBER

c: Jack L. Heath, Attorney for Claimant
Christopher J. McCurdy, Attorney for Respondent
Brad E. Avery, Administrative Law Judge
Philip S. Harness, Director